Alberta Government must decide on the future of Oil Sands project

February 28, 2020

On February 18, 2020, the Alberta Court of Queen's Bench granted an injunction compelling the Alberta Government 10 days to decide whether to approve Prosper Petroleum Ltd.'s Rigel Oil Sands Project (the Project). Alberta appealed the decision and on February 26 successfully brought an application stay the order until an appeal can be heard. The Court of Appeal will hear the appeal April 27, 2020.

The Project is a proposed Steam-Assisted Gravity Drainage extraction facility in the Athabasca Oil Sands region, with a designed capacity to produce up to 10,000 bbl/d of bitumen. The Project proponent, Prosper Petroleum Ltd. (Prosper) initiated the regulatory approval process in 2013 and the Alberta Energy Regulator granted its approval in June of 2018. Since then, successive provincial governments have failed to render a final decision on the Project. As a result, Prosper claimed that it has undergone a period of financial uncertainty and difficulty that included worker layoffs and reduced wages and work hours.

In its decision, the Court described the delay as "abusive" and confirmed that the Provincial government has a duty under the *Oil Sands Conservation Act,* RSA 2000 c O-7 to study project proposals and issue decisions within a reasonable timeframe. The Court ultimately held that the Alberta government breached this duty by delaying its decision on the Project for an unreasonable 19 months. By comparison, the Court noted that the longest previous decision delay on record had been seven months. Justice Romaine observed:

> *"The Crown has refused to give specific reasons for the lengthy delay, citing cabinet confidentiality. It submits that I must assume that cabinet is acting in the public interest with no evidence to support that assumption."*

Issuing the mandatory injunction, Justice Romaine concluded, "there is a strong public interest in encouraging a timely cabinet decision. The balance of convenience supports an injunction".

If upheld on appeal, this decision reinforces project proponents' rights to obtain finality in regulatory decisions within reasonable timelines and confirms the availability of injunctive relief when governments fail to make decisions in a timely matter. This order,

of course, does not guarantee a positive decision in favour of the Project, and the Alberta government has indicated, through its appeal and stay application, which it is prepared to challenge the order.

Samer Chomery, Articling Student's assistance was greatly appreciated.

By

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